(4)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1700 /2002.

PETITIONERS : (1) S.R.Nayak, aged 32 years,
S/o Dharam Lal Nayak,
R/o T.P.Nagar, Korba,
Distt. Korba (C.G.).

(2) Sushil Kumar Agrawal, aged 28 yrs,
S/o Vishnu Prasad Agrawal,
R/o Bamhnidih, Tah. Champa,
Distt. Janjgir-Champa (C.G.).

V E R S U S

RESPONDENTS : (1) State of Chhattisgarh
Through : Secretary,
Revenue Deptt. D.K.S.Bhawan,
Raipur (C.G.).

(2) Collector,
Janjgir-Champa (C.G.).

(3) C.L.Markandey,
Nayab Tahsildar, Champa
Distt. Janjgir-Champa (C.G.)

(4) Chairman,
Chhattisgarh Electricity Board,
H/Q - Raipur (C.G.).

(5) Kailash Sahre,
S/o Budgoo Sahre,
R/o Bamhnidih, Tah. - Champa
Distt. Janjgir-Champa (C.G.).

O. R. No. 1204/02
received by Shri Hemchan Agrawal
dated 19.08.02

19.8.02

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS ETC. AND OR THE OTHER WRIT OR WRITS/ORDER, DIRECTIONS :

XI-HC-22

(148)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.No. 1700 सन् 2002

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:

HON'BLE SHRI A.K. PATNAIK, CJ
& HON'BLE SHRI FAKHRUDDIN, J.

18/03/2005: -

Heard Mr. Hanuman Prasad Agrawal learned counsel for the petitioners, Mr. Pramod Verma, learned Addl. Advocate General, for the State of Chhattisgarh, Mr. R.S. Jaiswal, learned counsel for respondent No.4 and Mr. Ashok Verma, learned counsel for respondent No.5.

Two writ petitioners have filed this P.I.L. Their case in the writ petition is that respondent No.5 has encroached Government land in Khasra No.258, 319 and 320. Further case of the petitioners in the writ petition is that the concerned Patwari submitted a report that respondent No.5 had encroached Khasra No.258 and on the said encroachment report, the Tahsildar, Champa registered Encroachment Case No.52-A/68/98-99 under Section 248 of the M.P. Land Revenue Code, 1959 (hereinafter to be referred to as '*the Code*') and issued notice to respondent No.5. Respondent No.5 appeared but ultimately the Tahsildar, Champa passed an order imposing a fine of Rs.200/- only and directed him to remove the encroachment from the Government land and thereafter the concerned Patwari reported on 10/03/2000 that respondent No.5 had removed the encroachment from the Government land. Again the concerned Patwari submitted the encroachment report to the effect that respondent No.5 had encroached Khasra Nos.258 and 319 and the Tahsildar, Champa registered Encroachment Case No.2-A 68/2000-01 against respondent No.5 and

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आदेश पत्रक

मामला क्रमांक W.P.No.1700 सन् 2002

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	thereafter imposed a fine of Rs.1,000/- and directed him to remove the encroachment in a week's time, failing which the Government was to remove the same at its own cost which was to be recovered from respondent No.5 as land revenue. The petitioners have alleged that despite the said orders passed on 22/05/2001 by the Tahsildar, Champa, respondent No.5 did not remove the encroachment from the Government land. In the circumstances, the Tahsildar, Champa demolished the structure on the land on 13/06/2001. But after demolition of the structure on the said land, respondent No.5 again encroached the land in Khasra Nos. 258 and 319 and petitioner No.2 made a complaint to the Tahsildar, Champa against respondent No.5 and prayed for relief before the Tahsildar, Champa. Pursuant to the instructions of the Tahsildar, the concerned Patwari submitted encroachment report on 20/08/2001 and the Tahsildar, Champa registered fresh Encroachment Case No.13-A 68/2001-02 but as yet no action has been taken in the said case. The petitioners have further stated that the land in Khasra No.319 as per Government land record of 1929-30 is meant for use as Dharmashala, but respondent No.5 continues to encroach the said land and the connected Government land in Khasra No.320 and is trying to fill up the well on Khasra No.320. Aggrieved, the petitioners have filed this writ petition praying for a direction to the Government to realize the cost of demolition from respondent No.5 as soon as possible and to restore the land for Dharmashala. The petitioners have also prayed that respondent No.5 be directed to restore the well that he is trying to fill up.	

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आदेश पत्रक

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Respondent No.5 has filed a return denying that he has encroached Khasra No.258. In the said return, respondent No.5 has stated that Khasra No.319 is a piece of *Prachalit Abadi* land and under the provisions of the Code, *Abadi* land can be allotted to respondent No.5 and respondent No.5 applied before the Tahsildar, Champa for allotting him Khasra No.319 for his personal use. In the said return, respondent No.5 has further stated that the Gram Panchayat and Gram Sabha recommended the case of respondent No.5, and the Revenue Inspector and the concerned Patwari issued no objection certificate to such allotment of Khasra No.319 to respondent No.5. But the Tahsildar did not pass any order on the application of respondent No.5 for the allotment of said Khasra No.319 on the ground that the case was pending before this Court. Respondent No.5 has further stated in the return that the petitioners have filed this writ petition due to enmity and they have no *locus standi* to file this Public Interest Litigation. In particular it is stated in the return that petitioner No.1 Shri S.R. Nayak does not belong to Village to Bamnidih and that he has filed the writ petition just to harass respondent No.5. Respondent No.5 has further alleged in the return that petitioner No.2 Shri Sushil Kumar Agrawal has personal grudge and enmity against respondent No.5 and has filed this false petition in the shape of Public Interest Litigation.

Mr. Hanuman Prasad Agrawal, learned counsel appearing for the petitioners vehemently submits that the land in Khasra No.319 in Village Bamnidih belongs to the State Government and is meant for a Dharmashala and a Bus Stand is located near the said land and despite

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

requests made from time to time by the villagers of Village Bamnidih, the government is not taking steps to construct a Dharmashala on the said land and respondent No.5 has been allowed to encroach the land. He has prayed that a direction be given to the State to remove respondent No.5 from the land and to construct a Dharmashala on the said land.

Mr. Ashok Verma, learned counsel appearing for respondent No.5, on the other hand, submits that petitioner No.1 is not a resident of Village Bamnidih and has no *locus standi* to file this writ petition in respect of a land which is in Village Bamnidih. He further submits that the petitioner No.2 has personal grudge and enmity against respondent No.5 and therefore, he has filed this Public Interest Litigation. He vehemently argued that this writ petition filed by the two petitioners should not be entertained by this Court. Mr. Verma next submits that under Section 244 of the M.P. Land Revenue Code, 1959 and the corresponding provision in the Chhattisgarh Land Revenue Code, the Tahsildar has the power to dispose of sites in the *Abadi* area. He submits that since respondent No.5 had made an application for allotment of Khasra No.319 in Village Bamnidih to the Tahsildar, Champa, and the Gram Panchayat or the Gram Sabha had made recommendations in favour of respondent No.5 and the Revenue Inspector and Patwari had also no objection to such allotment of said Khasra No.319 in favour of respondent No.5, the Tahsildar, Champa should have first passed orders on the application of respondent No.5 for allotment of Khasra No.319 in his favour but instead the Tahsildar

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मामला क्रमांक ..... W.P. No. 1700 / सन् 2002

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

had made an observation that he cannot pass any orders on the said application as this case was pending before this Court.

We find that the respondent No.5 is a resident of Village Bamnidih and has an interest as such a villager in ensuring that government land in Bamnidih, located near the Bus Stand is not encroached by any private person so as to cause prejudice to the Members of the Public of the said village and hence has *locus standi* to file this Public Interest Litigation.

It is true that no orders have been passed by the Tahsildar, Champa on the application of respondent No.5 to allot Khasra No.319 in Village Bamnidih in favour of respondent No.5 as yet, but it is also true that several orders have been passed in various cases for removal of the encroachments in Khasra No.319 by respondent NO.5. The said orders passed against respondent No.5 have not been challenged as yet by respondent No.5. If that be so, the orders passed for removal of respondent No.5 have to be given effect to and yet the authorities appear not to have taken any action for removal of the encroachments from Khasra No.319. We therefore, direct the Tahsildar, Champa to take immediate steps to give effect to the orders for removal of encroachments from Khasra No.319. As to whether or not after the removal of such encroachment from Khasra No.319, a Dharmashala should be constructed on the said land is the matter to be decided by the State Government. This being purely an administrative matter the High Court in exercise of its powers under Article 226 of the Constitution cannot issue a mandamus to the Government to construct

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

a Dharmashala on such land. We can at best direct the State Government to take a decision on whether or not to construct a Dharmashala on the said land within a stipulated time and accordingly we direct respondents 1 and 2 to take a decision whether to construct Dharmashala on the said land or not within a period of two months from today. This order will not stand in the way of respondent No.5 challenging the orders of removal of encroachments passed in encroachment cases in the appropriate forum and if such challenge is made before the appropriate Forum by respondent No.5 it be open for the said Forum to pass any appropriate orders both interim and final. We make it clear that in this order we have not expressed any opinion as to the classification of the land in Khasra No.319 in Village Bamnidih and it is for the appropriate authority to decide the classification.

The security deposit of Rs.2,000/- made by the petitioners be refunded to them.

The writ petition stands disposed of accordingly.

Sd/-
Chief Justice

Sd/-
Fakhruddin
Judge

(पीछे देखिये)